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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/991,570	11/16/2001	David G. Cunningham	10010716-1	3593

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AGILENT TECHNOLOGIES, INC.
Legal Department, DL429
Intellectual Property Administration
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Loveland, CO 80537-0599

EXAMINER

PHAN, HANH

ART UNIT	PAPER NUMBER
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2638

DATE MAILED: 11/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/991,570	Applicant(s) CUNNINGHAM ET AL.	
	Examiner Hanh Phan	Art Unit 2638	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 November 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This Office Action is responsive to the RCE filed on 09/28/2005.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-4, 10-13, 19 and 20 are rejected under 35 U.S.C. 102(e) as being anticipated by Brown et al (US Patent No. 6,798,990).

Regarding claims 1 and 10, referring to Figure 1, Brown discloses a method for performing open fiber control for at least one optical transceiver in an optical network, comprising:

simultaneously transmitting output signals on respective output channels (i.e., channels 0 through N and include one channel which is designated as the safety channel, Fig. 1, col. 4, lines 6-28);

detecting a loss of signal (col. 4, lines 19-28);

in response to a successful detection of the loss of signal, maintaining the transmitting of one of the output signals on a designated one (i.e., safety channel) of the

output channels while disabling the transmitting of the output signals on all but the designated one of the output channels (col. 4, lines 19-28);

in response to a failure to detect the loss of signal, re-enabling the transmission of the output signals whose transmission had previously been disabled (col. 4, lines 6-28).

Regarding claims 2 and 11, Brown further teaches wherein the maintaining step comprising transmitting the output signal on the designated output channel (i.e., safety channel) at a predetermined power level up to a specified maximum eye-safe power level (Fig. 1, col. 4, lines 6-28).

Regarding claims 3, 12, 19 and 20, Brown further teaches the output signals are transmitted on the respective output channels at a total power above the predetermined power level (Fig. 1, col. 4, lines 6-28).

Regarding claims 4 and 13, Brown further teaches the step of transmitting comprises simultaneously transmitting the output signals on respective optical fibers (Fig. 1, col. 4, lines 6-28).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 5-9 and 14-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown et al (US Patent No. 6,798,990) in view of Monnard et al (US Patent No. 6,633,430).

Regarding claims 5, 6, 8, 9, 14, 15, 17 and 18, Brown differs from claims 5, 6, 8, 9, 14, 15, 17 and 18 in that he does not specifically teach the step of transmitting has a data rate greater than 1 Gbps. However, Monnard in US Patent No. 6,633,430 teaches the step of transmitting has a data rate greater than 1 Gbps (Figs. 1 and 4, col. 3, lines 10-25 and col. 5, lines 7-19). Therefore, it would have been obvious to one having skill in the art at the time the invention was made to incorporate the step of transmitting has a data rate greater than 1 Gbps as taught by Monnard in the system of Brown. One of ordinary skill in the art would have been motivated to do this since Monnard suggests in column 3, lines 10-25 and col. 5, lines 7-19 that using such the step of transmitting has a data rate greater than 1 Gbps have advantage of allowing providing an optical communication system with high speed and high capacity.

Regarding claims 7 and 16, the combination of Brown and Monnard teaches the step of transmitting uses wavelength division multiplexing (Fig. 4 of Monnard).

Response to Arguments

6. Applicant's arguments with respect to claims 1-20 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hanh Phan whose telephone number is (571)272-3035.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kenneth Vanderpuye, can be reached on (571)272-3078. The fax phone number for the organization where this application or proceeding is assigned is (703)872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)305-4700.


HANH PHAN
PRIMARY EXAMINER